

# WATER DISTRICT UPDATE

ISSUE NO. 4 ♦ FEBRUARY 1999

## Terms Used in This Issue

We use the term *water districts* (or *districts*) to establish a common term among the various types of general law and special law districts. This publication provides general information and updates of interest to such districts and is not intended to substitute for the advice of your own legal counsel. Districts created or affected by a special act of the Legislature may have a different set of statutes to follow. The terms *board* and *director* refer to the individual boards and directors who oversee these districts. The pronoun *we* means staff of the Water Utilities Division of the Texas Natural Resource Conservation Commission (TNRCC). The phrase *TNRCC rules* means the regulations found in Title 30 of the Texas Administrative Code (TAC).

## What's Inside

District Powers and Duties .....	2
Confidentiality of Customer Records .....	4
TNRCC's E-Mail List .....	4
FMT Assessments & Management Reviews .....	5
Director Qualifications .....	6
Frequently Asked Questions .....	8
Please Contact Us .....	11
Planning Your Annual Budget .....	12

## House Bill 2295 One-Call Notification

### Purpose

House Bill 2295, known as the Texas Underground Facility Damage Prevention and Safety Act (the Act), was enacted by the 75th Legislature and signed into law by the governor in July 1997. The Act created Texas' first statewide "One-Call" system, intended to reduce or prevent damage to underground facilities and to protect excavators from injury during excavation.

### Definitions

- ♦ *Class A underground facilities* are defined in the Act as electric; natural or synthetic gas; petroleum or petroleum products; steam; telecommunications (including voice, data, optical transmissions); cable TV; and any other liquid material or product not defined as Class B facilities.
- ♦ *Class B underground facilities* are defined as water, slurry, or sewage.
- ♦ *Excavator* is defined as a person or organization using explosives or mechanized tools to dig 16 inches or deeper.
- ♦ *Notification center* is defined as a private business that maintains maps and records detailing the location of underground facilities and notifies its members about an excavator's intention to dig in an area near the member companies' underground facilities.

### Voluntary Participation

The Act *does not* affect Class B facility owners; however, you may choose to voluntarily participate under the provisions of the statute as Class A operators. Voluntary participation by a Class B operator removes the exempt status of the facilities and causes the operator and the associated facilities to be treated the same as a Class A operator, including the obligation to send the \$50.00 annual fee to the Texas Underground Facility Notification Corporation (the Corporation).

The main benefit of participating in the statewide "One-Call" system is to reduce or prevent damage to underground facilities and protect excavators from injury. All facilities should become involved for the "One-Call" system to be accurate and efficient. By law, excavators will ensure that you receive notice of all excavation that may affect your facilities.

### Implementation Timeline

- ♦ Class A facility operators must have sent a \$50.00 annual fee to the Corporation by January 15, 1998.
- ♦ By March 1, 1998, "One-Call" notification centers must have registered with the Corporation. The Corporation must have developed processes for implementing the Act's numerous

requirements, including technical standards for notification centers' communications systems and public education materials.

- ◆ By May 1, 1998, Class A facility operators must have registered with a notification center and provide relevant maps and grid locations. The Corporation must select a vendor for a statewide toll-free number and supporting equipment. Class A facility operators with more than one million customers must annually provide their customers written notice about the general provisions of the Act and the statewide toll-free number.
- ◆ By October 1, 1998, excavators must begin calling the notification centers at least 48 hours before digging, with limited exceptions. When damage occurs to a facility, excavators are responsible for immediately notifying the underground facility operator to report the damage. If the excavator is not certain of the operator's identity, the excavator must contact a notification center, which will immediately notify all other affected notification centers. Notification centers must begin 24-hour statewide

operations to receive calls from excavators and provide notice to other notification centers and affected underground utility operators. Civil penalties may be imposed if an excavator fails to call before digging or in the event facilities are damaged. The civil penalties do not apply to residential property owners.

## Where Can I Find This Law?

Here are two ways to get a copy of House Bill 2295:

- ◆ Enclose a check or money order in the amount of \$3.40, payable to the Texas Legislative Council and include a written request for the complete text of House Bill 2295 from the 75<sup>th</sup> Legislative Session to the:  
Texas Legislative Council  
PO Box 12128  
Austin, TX 78711-2128

Please remember to give the Texas Legislative Council your return mailing address and a daytime telephone number and contact person if they have any questions about your request.

- ◆ Log on to the Legislature's Internet site at [www.capitol.state.tx.us](http://www.capitol.state.tx.us), click on "View Individual Bill Information," make sure the *legislative session* is set for the "75<sup>th</sup> Regular Session-1997," and enter the bill number "HB2295" to view the bill online.

## Participation Notification

Voluntary participation requires written notification to the Corporation at:

Donald M. Ward, Executive Vice-President  
Texas Underground Facility Notification Corporation  
PO Box 684562  
Austin, TX 78768-4562

## Additional Information

Please contact the Texas Underground Facility Notification Corporation with any questions that you may have about this new law. The telephone number is (512)477-2255 (CALL). ◆

# District Powers and Duties

The chart on page 3 contains information about the powers and duties of general law districts. The chart is also on the division's Web page at [www.tnrcc.state.tx.us/water/wu/district/distpubs.html](http://www.tnrcc.state.tx.us/water/wu/district/distpubs.html). The powers and duties of special law districts are dictated by each district's enabling legislation. A given category of a general law district's powers may be limited.

Powers that all general law districts have include:

- ◆ regional waste disposal (including sewage)—Water Code Section 30.021
- ◆ enforcement by police officers—Water Code Sections 49.216
- ◆ issuance of revenue bonds (specific general laws)
- ◆ levying an operation and maintenance tax—Water Code Section 49.107

Additionally, districts that provide potable water or wastewater services to household

users have the power to provide fire-fighting services—Water Code Section 49.351.

## District Types

### General Law Districts

A general law district conforms to and is established under a particular enabling statute in the Water Code. There are two types of general law districts: general-purpose and limited-purpose. **General-purpose districts** are further subdivided into water control and improvement districts, municipal utility districts, regional districts, and special districts. **Limited-purpose districts** are subdivided into fresh water supply, water improvement, irrigation, drainage, levee improvement, navigation, and stormwater control districts. In addition to the two types of districts mentioned above, soil and water conservation districts have

some water-related functions.

### Special Law Districts

The Legislature has passed numerous separate statutes creating special law districts, which may perform one function or a limited purpose. However, special law districts often combine several of the functions performed by some of the limited-purpose, general law districts. They may include geographical areas that differ from district areas defined in the various general laws or emphasize a different function. Although special law districts bear names such as water district, water supply district, and conservation and reclamation district, it should be noted that a district's name does not necessarily reveal its legal origin or the scope of its activities. Some special law districts encompass a natural area such as a watershed or river basin. Others may be organized in accordance with economic or political considerations. ◆

## DISTRICT POWERS AND DUTIES

(For General Law Districts Only)

Type of District	Statute	Constitutional Authority *	Creating Entity †	Regulate Groundwater	Supply Untreated Water	Supply Treated Water	Drainage & Flood Control	Street Lighting	Road Powers	Irrigation	Navigation	Eminent Domain	Recreation	Hydro-electric	Tax Bond Authority	Comments
Municipal Mgmt. Dist.	Local Govt. Code Ch. 375	Both	TNRCC		✓	✓	✓	✓	✓				✓	✓	✓	
Regional Dist.	Texas Water Code Ch. 59	XVI, 59	TNRCC		✓	✓	✓			✓	✓	✓	✓	✓	✓	
Water Control & Improv. Dist.	TWC Ch. 51	XVI, 59	CC or TNRCC		✓	✓	✓			✓	✓	✓		✓	✓	A
Water Control & Improv. Dist.	TWC Ch. 51	III, 52	CC or TNRCC		✓		✓			✓	✓	✓			✓	
Groundwater Conserv. Dist.	TWC Chs. 35, 36 & 52	XVI, 59	TNRCC	✓	✓	✓	✓					✓			✓	B
Fresh Water Supply Dist.	TWC Ch. 53	XVI, 59	CC		✓	✓						✓			✓	
Municipal Utility Dist.	TWC Ch. 54	XVI, 59	TNRCC		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Water Improv. Dist.	TWC Ch. 55	XVI, 59	CC or TNRCC		✓	✓	✓			✓		✓			✓	
Water Improv. Dist.	TWC Ch. 55	III, 52	CC or TNRCC		✓		✓			✓		✓			✓	
Drainage Dist.	TWC Ch. 56	Both	CC				✓					✓			✓	
Levee Improvement Dist.	TWC Ch. 57	XVI, 59	CC				✓					✓			✓	
Irrigation Dist.	TWC Ch. 58	Both	CC or TNRCC		✓		✓			✓		✓			✓	
Navigation Dist.	TWC Ch. 61	III, 52	CC								✓	✓			✓	C
Navigation Dist.	TWC Ch. 62	XVI, 59	CC				✓				✓	✓			✓	C
Self-Liquidating Nav. Dist.	TWC Ch. 63	XVI, 59	CC		✓		✓			✓	✓	✓			✓	C
Special Utility Dist.	TWC Ch. 65	XVI, 59	TNRCC		✓	✓	✓			✓		✓				
Stormwater Control Dist.	TWC Ch. 66	XVI, 59	TNRCC				✓					✓			✓	

**NOTES:** The name given to a district (MUD, WCID, etc.) does not always indicate which primary statute it operates under. For example, Blue River MUD may operate as a WCID or a FWSD.

The powers for special law districts are dictated by each district's enabling legislation.

General law district powers may be limited under a given category. Powers that all general law districts have include: regional waste disposal (including sewage)—Texas Water Code Section 30.021; enforcement by police officers—Texas Water Code Sections 49.216 and 60.077; issue revenue bonds (specific general laws); and levy operation and maintenance tax—Texas Water Code Section 49.107 (except for Special Utility Districts—Texas Water Code Section 65.235). Additionally, general law districts that provide potable water or wastewater services to household users have the power to provide fire fighting services—Texas Water Code Section 49.351.

\* Under the column heading *Constitutional Authority*, the phrase “both” means that both Article 16, Section 59 and Article 3, Section 52 of the Texas Constitution apply.

† Under the column heading *Creating Entity*, the phrase “CC” means created by a local county commissioners court.

**A**—Voter approval required for revenue bonds.

**B**—Regulate well spacing and production.

**C**—Port operation and regulation.

# Confidentiality of Customer Records

The newly recodified Utilities Code discusses the confidentiality of customer information in Sections 182.051–.055. Unless the customer has requested in writing to restrict access, the customer’s records are open to the public. Before the codification of the Utilities Code, these statutes were located in Vernon’s Ann. Civ. St. art. 1446h, §§1 to 6 and Acts 1993, 73rd Leg., ch. 473.

## Definitions

The Utilities Code confidentiality provisions apply to:

- ◆ *Government-operated utility*, which is defined in Section 182.051(3) as “a governmental body or an entity governed by a governmental body that, for compensation, provides water, wastewater, sewer, gas, garbage, electricity, or drainage service.”
- ◆ *Personal information* is defined in Section 182.051(4) as “an individual’s address, telephone number, or social security number.”

## Your District’s Responsibilities

Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer’s account records if the customer requests that the utility keep the information confidential. A customer can only restrict his or her social security number, home address, and home telephone number. All other information maintained by the district is open to the public, such as the customer’s name, billing history, service address, and taxes paid.

According to Section 182.052(c), the utility must include with a bill sent to each customer:

- ◆ a notice of the customer’s right to request confidentiality under Chapter 182, Subchapter B of the Utilities Code
- ◆ a statement of the amount of any fee applicable to the request
- ◆ a form by which the customer may request confidentiality by marking the appropriate box on the form and returning it to the utility

## Fees Allowed

Section 182.053 allows the government-operated utility to charge a fee, not to exceed the administrative cost of complying with the request, to each customer who requests confidentiality. We suggest that the fee be formally adopted by the utility’s governing body.

## Exceptions

The exceptions that would allow the government-operated utility to disclose personal information in a customer’s account record are discussed in Section 182.054. The exceptions are disclosures to:

- ◆ an officer or employee of the state, a political subdivision of the state, or the United States acting in an official capacity
- ◆ an employee of the utility acting in connection with the employee’s duties
- ◆ a consumer reporting agency
- ◆ a contractor or subcontractor approved by and providing services to

the utility, the state, a political subdivision of the state, or the United States

- ◆ a person for whom the customer has contractually waived confidentiality for personal information
- ◆ another entity that provides water, wastewater, sewer, gas, garbage, electricity, or drainage service for compensation

## Date of Access

If an open records request was made, for example, on February 2nd and the customer restricted access to the information on February 3rd, the information must be disclosed. The date of the open records request preceded the date of the customer’s restriction request.

## Additional Information

Please contact the Attorney General’s Office at (512)478-6736 (OPEN) for additional information. ◆



## TNRCC’s E-Mail List

The TNRCC has established an electronic mailing (e-mail) list to provide subscribing citizens and regulated communities with alerts on scheduling notices and TNRCC items of broad interest. This communications tool comes out of the monthly Regulatory Forum, a monthly meeting held by TNRCC’s Office of Policy and Regulatory Development to discuss proposed agency rules at an early stage of their development. The e-mail list will provide alerts on items such as:

- ◆ work session agendas
- ◆ publication of new rules, comment deadlines, comment extensions
- ◆ items of broad interest, such as the selection of a new deputy director and results of the Business Process Review Study
- ◆ key deadlines
- ◆ significant press releases
- ◆ notice of advisory and special committee meetings
- ◆ minutes from the Regulatory Forum agendas

Anyone may subscribe to the TNRCC’s e-mail list by following the directions outlined at [www.tnrcc.state.tx.us/oprd/forum/listserv.html](http://www.tnrcc.state.tx.us/oprd/forum/listserv.html). ◆

# FMT Assessments and Management Reviews

## FMT Assessments

During 1998, the TNRCC implemented two new programs. One of these is called an FMT assessment. This program is designed to evaluate new and existing water systems in terms of each system's available **financial** resources, **managerial** ability, and **technical** skills. The FMT assessment is a part of the Capacity Development Program required by the Safe Drinking Water Act Amendments of 1996. Failure by the TNRCC to implement a Capacity Development Program could result in a loss of financing for water system improvements. A contract was awarded to the Texas Rural Water Association on May 21, 1998, to perform the FMT assessments. Other tasks required by the contract include:

- ♦ assistance to potential applicants for the Drinking Water State Revolving Fund (DWSRF)
- ♦ investigation and assistance with potential consolidation projects
- ♦ general technical assistance

### When Is an FMT Done?

There are two circumstances in which the TNRCC will initiate an FMT assessment. One, your water system has been invited by the Texas Water Development Board to apply for a DWSRF loan. The Safe Drinking Water Act requires an FMT assessment before a water system can receive the loan. We recommend that the FMT assessment be scheduled immediately so that any corrective actions may be taken during the time allowed to apply for the loan. Two, health and compliance factors at your water system could result in public health risks. The system is in violation of drinking water standards or has been in violation in the recent past. *This FMT assessment is not optional.* The TNRCC contractor will provide the water system with information on the general issues that will be covered, the records needed, and the estimated time needed for the assessment. If necessary, the

contractor will recommend a corrective action plan to address significant deficiencies found during the assessment.

### Possible FMT Outcomes

The first possible result is that the district is found to have sufficient capacity and no further actions are necessary to comply with drinking water standards. Some actions may be recommended.

The second possible result is that the district is required to implement a corrective action plan to comply with drinking water standards. The plan may address immediate or long-standing problems.

The third possible result is that the district will be evaluated for consolidation with another entity that has been found to have ample capacity. If a consolidation assessment is conducted, consideration is given to the willingness of the parties and any funding required to accomplish the consolidation.

## Management Review Program

The second new program is called a management review (MR). Its purpose is to provide water districts with information they can use to sustain the level of management required to operate economically, efficiently, and effectively. Over the years we have observed districts that have had:

- ♦ internal strife between board members
- ♦ poor communication with and misinformation from their own general manager
- ♦ severe long-term financial difficulties that led to bankruptcies

During the summer of 1997, the District Administration Section contracted with the accounting firm of Deloitte & Touche to perform MRs on two water districts. Then in 1998, TNRCC staff began performing the MRs in-house. Our intent is to identify problems and their causes and to suggest

improvements. Our recommendations are presented to the board of directors.

Initially, our review program will be limited to the following areas:

- ♦ examining the district to assess efficiency and effectiveness whether the district has its own management (employees) or contracts its management to consultants
- ♦ examining the district's policies and procedures for evaluation of its consultants
- ♦ ensuring adoption of certain policies required by TNRCC regulations

Our criteria for selection of districts to review will be:

- ♦ referrals from TNRCC upper management
- ♦ substantial complaints
- ♦ a sample of water districts on our database

Districts will be given the opportunity to respond to the preliminary review report. We will consider their response in our final report.

## How an FMT Differs from an MR

MRs involve generally examining ways to improve communication between the board and the district's consultants or the general manager, areas of inefficiency, and compliance tests. While the MR of a district focuses on all aspects of the district's powers and functions, the FMT assessment will focus on the water system, including how the system is managed and operated. The financial aspects of the water system will also be assessed. ♦



# Director Qualifications

## Related Directors

*Can in-laws serve on the same board of directors?* With a few exceptions, relatives cannot serve on the same board.

**General Rule:** Certain members of the same family (including in-laws) cannot serve on the same board of directors, according to Water Code Section 49.052. Relatives related within the third degree of affinity (marriage) or consanguinity (blood) are disqualified from serving on the board of directors. Government Code Chapter 573 defines the degrees of relationships.

**Exceptions:** Water Code Section 49.052(f) states that the general rule does not apply to special water authorities (Water Code 49.001), districts defined in Section 49.181(h)(4), or a district whose principal function is to provide irrigation water to agricultural lands or to provide nonpotable water for any purpose.

### Special Water Authorities (Water Code Section 49.001)

This term means a river authority as defined in Water Code Section 30.003, or a district created by a special act of the Legislature that:

- ◆ is a provider of water or wastewater services to two or more municipalities and
- ◆ is governed by a board of directors appointed or designated in whole or in part by the governor, the Texas Water Development Board, or municipalities within its service area

### Section 49.181 Districts [Water Code 49.181(h)(4)]

This term means a district

- ◆ that is governed by a board of directors appointed in whole or in part by

the governor, a state agency, or the governing body or chief elected official of a municipality or county and

- ◆ that does not provide or propose to provide, water, sewer, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function.

### Degree of Consanguinity

Government Code Section 573.023 states that the degree of relationship by consanguinity (blood) between a person and his or her descendant is determined by the number of generations that separate them. A parent and child are related in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree, and so on. If a person and his or her relative are related by blood, but neither is descended from the other, the degree of relationship is determined by adding either the number of generations between the person and the nearest common ancestor of the person and his or her relative or the number of generations between the relative and the nearest common ancestor. Section 573.023(c) states that a person's relatives within the third degree by blood are the person's:

- ◆ parent or child (relatives in the first degree);
- ◆ brother, sister, grandparent, or grandchild (relatives in the second degree)
- ◆ great-grandparent, great-grandchild, aunt who is a sister of a parent of the person, uncle who is a brother of a parent of the person, nephew who is a child of a brother or sister of the person, or niece who is a child of a brother or sister of the person (relatives in the third degree).

### Degree of Affinity

Government Code Section 573.025 states that a husband and wife are related to each other in the first degree by affinity. For other relationships by affinity (marriage), the degree of relationship is the same as the degree of the underlying relationship by blood. For example: if two persons are related to each other in the second degree by blood, the spouse of one of the persons is related to the other person in the second degree by marriage. A person's relatives within the third degree by marriage are anyone related by blood to the person's spouse in one of the ways named in Section 573.023(c) or the spouse of anyone related to the person by blood in one of the ways named in Section 573.023(c).

## Qualifications Chart

See the chart on page 7 for information on the qualifications for a director of a general law district. The chart is also on the Division's web page under "General Information on Water Districts" at [www.tnrcc.state.tx.us/water/wu/district/distpubs.html](http://www.tnrcc.state.tx.us/water/wu/district/distpubs.html).

Election Code Section 141.001 (Public Office Qualification) applies to all general law districts except municipal management districts. If a minimum age or a requirement to reside in the district's boundaries was not specifically mentioned in the governing Water Code chapter for the district's type, then, according to Election Code Section 141.001, the candidate must be at least 18 years old and have resided in the district for at least six months. ◆

<div> <div>Director Qualifications</div> <div>(for General Law Districts Only)</div> </div>							
Type of District	General Law Statute	If the qualification provision applies, the column is marked ✓. If it does not apply, the column is blank, except for relevant notes.					
		Director Disqualification (A)	Minimum Age	District Residency Requirement	Land-Owner Requirement	Elected Directors (K)	Appointed Directors
Municipal Management District	Local Government Code, Ch. 375		18	✓ D	✓ D		✓
Water Control & Improvement District	Water Code, Ch. 51	✓ B	18	E	✓	✓	✓
Underground Water Conservation District	Water Code, Ch. 52		18	✓		✓	L
Fresh Water Supply District	Water Code, Ch. 53	✓	18	✓ F		✓	L
Municipal Utility District	Water Code, Ch. 54	✓	18	G	G	✓	L
Water Improvement District	Water Code, Ch. 55	✓ B	18	E	✓	✓	✓
Drainage District	Water Code, Ch. 56	✓ C	18	✓		✓	✓
Levee Improvement District	Water Code, Ch. 57	✓ C	18	H	✓	✓	M
Irrigation District	Water Code, Ch. 58		18	I	✓	✓	L
Regional District	Water Code Ch. 59		18	✓		✓	L
Navigation District, Article 3, Sec. 52	Water Code, Ch. 61		18	✓	✓		✓
Navigation District, Article 16, Sec. 59	Water Code, Ch. 62		18	✓		✓	N
Self-Liquidating Navigation District	Water Code, Ch. 63		18	✓	✓	✓	L
Special Utility District	Water Code, Ch. 65	✓	18	J	✓	✓	L

**NOTES:** Election Code Section 141.001 (Public Office Qualification) applies to all general law districts except municipal management districts. If a minimum age or a requirement to reside in the district's boundaries was not specifically mentioned in the governing Water Code chapter for the district's type, then, according to Election Code Section 141.001, the minimum age to qualify for public office is 18, and the candidate must have resided in the state for at least 12 months and in the district for at least six months.

- A** - Does not apply to districts whose boundaries include one entire county [Water Code Section 49.052].
- B** - Does not apply to districts whose principal function is to provide irrigation water to agricultural lands or to provide nonpotable water for any purposes [Water Code Sections 49.052, 51.072, and 55.102].
- C** - Does not apply to districts governed by a board of directors appointed in whole or in part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide water, sewer, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function, or districts whose principal functions are to provide irrigation water to agricultural lands or nonpotable water for any purpose [Water Code Sections 49.052(f) and 49.181(h)(4)].
- D** - Potential directors must either reside in the district; own land inside the district's boundaries; have a beneficial interest in a trust that owns property inside the district; own stock in a corporate owner of property inside the district; OR be an agent, employee, or tenant of a person, trust, or corporation that owns land inside the district's boundaries [Local Government Code Section 375.063].
- E** - Potential directors must own land subject to taxation inside the district's boundaries AND reside in the state [Water Code Sections 51.072 and 55.102].

- F** - Potential directors must be a registered voter of the district [Water Code Section 53.063 and Election Code Section 1.005].
- G** - Potential directors must reside in the state AND either own land subject to taxation inside the district's boundaries OR be a qualified voter in the district [Water Code Section 54.102 and Election Code Sections 11.001 11.002].
- H** - Potential directors must be a qualified property taxpaying elector of the precinct and the county from which he is elected [Water Code Section 57.059].
- I** - Potential directors must own land inside the district's boundaries AND reside in the state AND owe no delinquent taxes or assessments to the district [Water Code Section 58.072].
- J** - Potential directors must reside in the state AND either own land subject to taxation in the district, be a user of the district's facilities, or be a qualified voter in the district [Water Code Section 65.102 and Election Code Sections 11.001 11.002].
- K** - For those districts subject to Water Code Chapter 49, elected directors can fill vacancies on the board by appointing a director to fulfill the unexpired term [Water Code Section 49.105].
- L** - The district has a provision that allows for the temporary appointment of directors and the directors are thereafter elected [Water Code Sections 36.016, 53.020, 54.022, 58.026 and 58.032, 59.021, 63.081 and 63.089, and 65.022].
- M** - Initial directors are appointed. The board may call an election to decide whether the district should have an appointed or elected board. The County Commissioners Court can remove an appointed member by majority vote [Water Code Sections 57.051, 57.053, and 57.057].
- N** - Initial board members are appointed by the County Commissioners Court. Thereafter, the County Commissioners Court or the Navigation Board may decide whether the district should have an appointed or elected board [Water Code Section 62.062 and 62.0631].

Revised after Publication on March 22, 2000 to Reflect Changes to the Statutes Made by the 76<sup>th</sup> Legislature.

# Frequently Asked Questions

## Audit Reports

*How many copies of the audit report should we file with the TNRCC?*

We request that only one copy of each district's audit report, management letter, and filing affidavit; OR the annual financial report with the filing affidavit; OR the financial dormancy filing affidavit be filed with the TNRCC. If we receive multiple copies, we will recycle the unneeded reports.

## Board Meeting Records

*When can we dispose of the notices, agenda, minutes, or tape recording for a board meeting?*

Records from an executive session (also called a closed session) must be kept for a minimum of two years after the meeting date. However, if during that time, a lawsuit that concerns the meeting is brought, the agenda or tape of that meeting must be kept pending resolution of the lawsuit [Government Code Section 551.104(a)].

Minutes or tape recordings of an open meeting must be kept and are considered permanent records of the district (Government Code Section 551.021). Notes taken during meetings from which written minutes are prepared must be retained for 90 days after approval of minutes by the governing body. Agendas from open meetings must be kept for two years. Ordinances, orders, and resolutions, including those that have been repealed, revoked, or amended, must be kept and are considered permanent records of the district. The open meeting notice must be retained for two years.

For additional information, please refer to the Local Schedule GR, 3rd Edition, *Retention Schedule for Records Common to All Local Governments*, effective November 1, 1995, which can be downloaded from

[www.tsl.state.tx.us/slrn/gr.html#1-2](http://www.tsl.state.tx.us/slrn/gr.html#1-2); or contact the Texas State Library and Archives Commission at (512)454-2705.

## Developer as Board Member

*Can a developer serve on the board of a municipal utility district (MUD)?*

With a few exceptions, a developer cannot serve as a director. If Water Code Section 49.052 does not apply to the district in question, then a developer can serve on the district's board, provided that the developer is qualified to serve under Section 54.102, which states that to be qualified to serve as a director of a MUD, a person must be at least 18 years old, a resident citizen of the State, and either own land subject to taxation in the district or be a qualified voter in the district. See the chart on director qualifications for the various district types on page 7.

According to Water Code Section 49.052 (Disqualification of Directors), "a person is disqualified from serving as a member of a board of a district *that includes less than all the territory in at least one county and which, if located within the corporate area of a city or cities, includes within its boundaries less than 75 percent of the incorporated area of the city or cities*, if that person . . . (3) is a developer of property in the district . . . [emphasis added]" In this section a *developer of property in the district* means "any person who owns land located within a district and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots

fronting thereon or adjacent thereto."

Water Code Section 49.052 does not apply to special water authorities, districts described in Water Code Section 49.181(h)(4), or a district whose principal function is to provide irrigation water to agricultural lands or to provide nonpotable water for any purpose.

Water Code Section 49.181(h)(4) describes a district that is governed by a board of directors appointed in whole or in part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and that does not provide, or propose to provide, water, sewer, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function.

## Director's Bond

*Does the failure of a director to maintain a bond for the faithful performance of his duties constitute a failure to maintain a qualification required by law to serve as a director under Section 49.055(c) of the Water Code?*

The failure to maintain a bond does not disqualify a public officer from service on the board of directors. The execution of a bond is not a condition precedent to the right of office; therefore, an officer can be qualified to take office without a bond. This section does require that a bond be executed before the director votes to conduct business of the district.

## Emergency Approval

*How does a district apply for emergency approval of a district project under Water Code Section 49.274?*

If a district is experiencing an emergency condition that may create a *serious health hazard* or an *unreasonable*



*economic loss* to the district that requires *immediate corrective action*, the district may negotiate *limited duration contracts* to make the necessary repairs. It is to your benefit to follow up on these requests to the Creation and Bond Review Team with:

- ◆ a telephone call to the Team at (512)239-6161
- ◆ a facsimile request letter sent to the Team at (512)239-6190

For prior approval, the district or its consultants must send a letter to the TNRCC seeking emergency approval, detailing the issues and reasons why the district should be authorized to proceed with awarding a contract without complying with the competitive bidding statutes contained in the Subchapter I, Chapter 49 of the Water Code.

We have targeted emergency approvals for a two-day turnaround. If the emergency is of such an immediate danger that it does not allow for this time, the district may proceed immediately with necessary repairs without prior TNRCC approval and submit the details to us describing the specific emergency as soon as possible.

## ETJ Areas

*Do water districts that were created by the local county commissioners have extraterritorial jurisdiction (ETJ) areas?*

No, water districts in general do not have ETJs. Chapter 42 of the Local Government Code defines an ETJ as the annexable perimeter surrounding the boundaries of all incorporated cities, towns, and villages. The population level of a municipality determines the width of its ETJ. Most water districts have the power of eminent domain; however, this has nothing to do with annexation or zoning powers. Eminent domain powers allow water districts the right to buy property for public use. See the chart on the powers and duties for the various district types on page 3.

## Paying Agents

*What are a district's responsibilities regarding the paying agents on bonds?*

The paying agent's duties are to make sure that the semiannual bond payments are made in a timely manner. When water districts prepare the information required by Water Code Section 49.455, we request that they include at least the name, address, and phone number of their paying agent, so that we can respond to callers' questions. If we are unable to determine who the district's paying agent is, we will refer the caller to the district's bookkeeper, legal counsel, or general manager for assistance.

Sometimes callers ask for the paying agent of a district that no longer exists. Under Water Code Section 49.455(i), districts must file a statement of dissolution, annexation, or consolidation with TNRCC's executive director. If a district with outstanding bonded indebtedness is dissolved, annexed, or consolidated, we request that the board provide us with the paying agent's name and a contact address and telephone number for each outstanding bond issue when it submits a copy of the appropriate resolution or order, showing the effective date of the dissolution, annexation, or consolidation.

## Prorated Billing

*Can a district prorate its monthly bill when applying partial payments received if the bill includes both services directly provided by the district, such as water and wastewater services, and services not provided by the district, such as billing for a city's contracted garbage collection service?*

The TNRCC's position is that, unless a district has enabling legislation that addresses this issue, the bill should not be prorated among the services the district provides and the service where it acts solely as the billing and collection agent.

Water Code Section 49.212 provides districts the ability to discontinue any or all facilities or services to enforce payment of an unpaid charge, fee, or rental due the district. While some districts have stated that the Health and Safety Code allows cities the ability to terminate water services for nonpayment of a garbage bill, the Water Code does not specifically allow a district the ability to terminate its services for a service not provided by the district.

However, when a district is acting as an agent for a city and it has a policy providing for the termination of its utility services for nonpayment of a nondistrict service even though the customer has currently paid for all other district services, the district should consider:

- ◆ existing law
- ◆ potential adverse effects to the public health when essential utility services are terminated
- ◆ the city's ability to seek a remedy in the appropriate legal forum for the unpaid fee or a portion of it
- ◆ the city's ability to cancel the specific service to enforce the collection by the district
- ◆ the potential liability to the district and individual board members

## Enforcing Voluntary Contributions

*Can a district discontinue its services for nonpayment of a voluntary charge?*

A district cannot discontinue its services to enforce the payment of a voluntary contribution. Customers can delete the voluntary contribution from their bill without penalty.

The voluntary contributions collected are not subject to regulatory assessments or late payment penalties. A late penalty based on the percentage of payment in arrears should not include the volunteer contribution in the amount in arrears. To facilitate this approach, we suggest that the district separate the voluntary contribution from the total amount in arrears on the billing statement.

If the board has not established a policy to address the voluntary fees collected for another entity, we suggest that the language of Water Code Section 13.143 be followed as a general guide. That section authorizes a utility to set up as part of its billing process a program under which the utility collects from its customers a voluntary contribution for a volunteer fire department or an emergency medical service. Section 13.143 requires that:

- ◆ a billing by the utility that includes a voluntary contribution must clearly state the contribution is voluntary and that the customer may delete it from the billed amount
- ◆ the utility must promptly deliver contributions that it collects

## Public Funds Investment Act

*Does the Public Funds Investment Act (PFIA) apply to navigation districts or to districts with appointed boards, even if the district's monies are held in trust in government securities and are used only to service the debt?*

If the district has temporary investments, regardless of the district's type or whether the board members are elected by the local voters or appointed, then the PFIA applies. According to Government Code Section 2256.004, the PFIA does not apply to:

- ◆ a public retirement system as defined by Government Code Section 802.001
- ◆ state funds invested as authorized by Government Code Section 404.024
- ◆ an institution of higher education having total endowments of at least \$95 million in book value on May 1, 1995
- ◆ funds invested by the Veterans' Land Board as authorized by Chapter 161, 162, or 164, Natural Resources Code
- ◆ registry funds deposited with the county or district clerk under Chapter 117, Local Government Code

- ◆ a Section 401(K) or 457 deferred compensation plan under the 1986 Internal Revenue Code

## Quorum

*If two directors resign from a district that is authorized to have five directors on its board, does the number of directors needed for a quorum or a majority vote then become two directors out of the three remaining?*

No. A quorum is defined in the Water Code under Section 49.053 as "a majority of the membership of the board." Since the district was created as a five-member board, the number of directors needed for a quorum or a majority vote remains at three directors. A quorum is based upon the total number of director positions allotted to each board, regardless of the number of vacancies.

Water Code Section 49.105 mandates that the remaining directors fill all vacancies on the board, unless the number of directors is reduced to fewer than a majority. The appointed director shall serve for the unexpired term of the director he or she is replacing.

## Rate Order

*Are districts required to file a copy of their rate order with the TNRCC?*

Yes. To comply with the TNRCC rules as stated in 30 TAC Section 293.96, a certified copy of the water and wastewater rate order adopted by the board, and any amendments, must be submitted to TNRCC's executive director within 30 days of adoption. Also, districts must file a certified copy of the order canvassing results of any maintenance tax elections within 30 days after adoption. These records will be filed in the district's supervision file in the TNRCC's Records Management Section of the Information Resources Division. Please mail these items to:

Executive Director  
Attn: District Administration  
Section— MC 152  
Texas Natural Resource  
Conservation Commission  
PO Box 13087  
Austin TX 78711-3087

## Refusal to Provide Services

*Can a district refuse to provide retail water and wastewater services to a new landowner if the previous landowner did not pay his monthly service bill?*

A district probably may not condition service to a new customer on payment of outstanding charges incurred by a prior customer, *unless* a legal relationship between the two customers causes the new customer to be liable for the debts of the other, or unless the new customer had agreed in writing to be responsible for the charges incurred by the previous customer. Otherwise, the prior customer's deposit must be used to recover any outstanding amounts owed. If the deposit amount does not cover the outstanding balance in full, the district's only recourse to collect the outstanding balance is to pursue the nonpaying customer.

## Service Operator

*When a district hires a service operator, must the district comply with the competitive bidding statutes or the Professional Services Procurement Act (PSPA)?*

Under current state law, the competitive bidding statutes do not apply to the board hiring a service operator or contracting with a service operating firm. In addition, a service operator is not defined as a professional service provider under the provisions of the PSPA. However, if the service operator is providing other services to the district, such as accounting, the operator could come under these provisions.

## Supplemental Schedule N

*In the Annual Audit Report Requirements Manual (TNRCC publication RG-81), is Supplemental Schedule N (Board Members, Key Personnel and Consultants) reported on an accrual/modified accrual basis to coincide with the reporting of the financial statements?*

Supplemental Schedule N is to be reported on a cash basis to show the amounts actually paid to each director, key personnel and consultant during the district's fiscal period.

According to Water Code Section 49.060, directors who have elected to receive per diem payments are not eligible to be reimbursed for their expenses; however, directors who receive fees of office can be reimbursed for their expenses. Only the amounts actually paid during the fiscal year should be reported. Do not report amounts that were eligible to be paid during the fiscal year.

The other supplemental schedules are to be reported on an accrual/modified accrual basis as appropriate to the district's financial statements. Independent auditors may wish to add a note to Supplemental Schedule N clearly stating that this schedule has been prepared on a cash basis to comply with Water Code Section 49.060, to avoid misleading the user of the financial statements.

## Voter Eligibility

*Can a district require that a voter must reside inside the district's boundaries and own real property subject to taxation by the district to be eligible to vote in district elections?*

No. There are no provisions in either the Election Code or the general law provisions applicable to districts described in Water Code Chapter 49 that require property ownership to be eligible to vote.

## Property Tax Exemptions

*Can a district offer both an exemption for disability and an over 65 exemption?*

Yes, a taxing entity may offer both types of exemption (Tax Code Section 11.13). However, an eligible disabled person who is 65 or older may not receive both exemptions but may choose either. For more information on this issue, call the Comptroller's Office at (800)252-9121.

## GASB's Y2K Dilemma

*How does a district apply the Governmental Accounting Standards Board (GASB) Technical Bulletin No. 98-1?*

**From the District's Perspective:** The GASB recently issued Technical Bulletin 98-1, *Disclosures about Year 2000 Issues*, that is effective for financial statements on which the auditor's report is dated after October 31, 1998. Among other things, it requires a local government (district) to disclose, in a note to its financial statements, the effects of the Year 2000 Issue on its operations. The disclosure should include a description of the work completed or in progress that will make the district's computerized systems "Year 2000 Compliant." The technical bulletin is available on the GASB Web site ([www.gasb.org](http://www.gasb.org)) or can be ordered by calling the GASB Order Department at (800)748-0659 (product number GTB98-1). GASB technical bulletins are authoritative pronouncements; therefore, each district must disclose the Year 2000 information in its notes to the financial statements that will be included in the audited reports dated after October 31, 1998.

**From the Independent Auditor's Perspective:** We note that the accounting professional organization, the American Institute of Certified Public Accountants (AICPA), has expressed concerns with the required disclosures in the technical

bulletin. They state that the auditor may need to consider modifying his audit opinion with respect to these disclosures. The AICPA has a Web site ([www.aicpa.org](http://www.aicpa.org)) offering reporting guidance on Year 2000 disclosures. ◇

## Please Contact Us!

We invite you to send in any comments or questions. Contact the Reports and Supervision Team of the District Administration Section at the Water Utilities Division's electronic mail address: [wu@tnrcc.state.tx.us](mailto:wu@tnrcc.state.tx.us) or call us at (512)239-6170.

If you are not on the Internet or need to contact another program area, please call either the TNRCC's main telephone number at (512)239-1000 or the Water Utilities Division's main telephone line at (512)239-6096. You can also send us a facsimile message at (512)239-6972 or write to us at Water Utilities Division – MC 152, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

The TNRCC maintains an Internet site at [www.tnrcc.state.tx.us](http://www.tnrcc.state.tx.us), which includes information about the TNRCC's commissioners and their meeting agenda, agency publications, proposed and adopted rules, and pages maintained by the many divisions and sections of the agency. ◇

# Planning Your Annual Budget

As discussed in the *Water District Accounting Manual* (TNRCC publication RG-80), Commission Rule 30 TAC Section 293.97 requires that before the beginning of the district's fiscal year the board must adopt an operating budget. The adopted budget is not a spending limitation imposed by the TNRCC but a useful planning tool for the governing board. The American Institute of Certified Public Accountants also requires local boards to annually adopt a comprehensive operating budget (*Codification of Governmental Accounting and Financial Reporting Standards*, Section 1700, paragraph 101, "The Budget and Budgetary Accounting").

## Purpose of the Budget

The budget can assist in deciding when and how much to adjust district rates to

ensure that costs are recovered from the users. It is up to each district's board to determine what level of detail is necessary to plan and monitor the district's operations. Depending on the development of the district, each district must evaluate:

- ◆ its growth rate
- ◆ the age and condition of its capital assets and facilities
- ◆ potential revenue sources
- ◆ needed reserve amounts for unexpected costs, also known as a cushion

## Points to Consider

The budget is very important in the tax rate adoption process because it shows how much money will be needed to operate the district. When directors meet to discuss the budget to adopt for the coming year, they should consider how much money is needed to:

- ◆ cover normal ongoing operations
- ◆ fund debt service
- ◆ provide for maintenance needs
- ◆ allow for unexpected emergencies

A board should develop a five-year maintenance plan to address anticipated repairs and replacements. This planning is necessary to continue the district's operations and protect the public's health and safety. Over time, infrastructure will deteriorate and equipment will fail.

## Is Your Tax Necessary?

Some districts do not need to levy a tax. They have no long-term debts outstanding, or they have operations that can be fully funded by other sources. When you review the district's needs for the upcoming fiscal year, consider whether the district needs to levy a tax.

The TNRCC is an equal opportunity/affirmative action employer. The agency does not allow discrimination on the basis of race, color, religion, national origin, sex, disability, age, sexual orientation or veteran status. In compliance with the Americans with Disabilities Act, this document may be requested in alternate formats by contacting the TNRCC at (512)239-0028, Fax 239-4488, or 1-800-RELAY-TX (TDD), or by writing P.O. Box 13087, Austin, TX 78711-3087.



printed on recycled paper using soy-based ink

Bulk Rate  
US Postage Paid  
Austin Texas  
Permit No 1967

Water Utilities Division MC 152  
Texas Natural Resource Conservation Commission  
PO Box 13087  
Austin TX 78711-3087  
RETURN SERVICE REQUESTED

